

PHILIP MORRIS INCORPORATED
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To: • Files
From: • G. C. Adkins
Subject: • Barclay - Meeting with FTC Staff on August 19, 1981

Date: August 28, 1981

Messrs. Krash and Chapman and I met with members of the FTC staff on August 19, 1981 following our delivery the day before of a letter and memorandum in reply to Brown & Williamson's submission concerning Barclay. The meeting was held at the offices of the Commission's Division of Advertising Practices and was attended by Wallace Snyder, Collot Guerard (departed early), Matthew Myers and Andrew Sacks, all of whom had attended our initial meetings with the staff on July 10.

Chapman opened the discussion with an explanation of the film we proposed to show, noting that it is directed to the "swirling smoke" phenomenon proffered by B&W as the sole rationale for the design of the Barclay filter. He pointed out that the relative merits of a turbulent versus a laminar smoke flow pattern depend on subjective effects which have long been debated within the industry. He went on to say that, even if B&W's theory of additional taste impact is accepted, that would not answer the question as to the difference in dilution (and therefore "tar" delivery) between machine and human smoking. Krash noted that B&W can make a cigarette in whatever form it wishes; the question is whether that cigarette can be advertised as an "ultra low tar" product.

We then showed the film depicting the smoke flow patterns of one puff drawn from each of the following cigarettes: Barclay, Cambridge, Cambridge with baffle, Doral II, Vantage and a Barclay-like prototype produced by PM. We ran the film twice and the point seemed to register with all of the staff members (particularly Guerard) that it is not difficult to produce swirling smoke and that, even where the initial pattern is smooth and laminar, turbulence is produced as soon as the smoke encounters a surface (which, Chapman noted, would presumably happen even more quickly in the human oral cavity than in the glass tube used in the filmed experiment). In response to a question from Myers, we described the baffle used to modify the Cambridge cigarette and explained that the Doral II filter incorporates a much more complicated baffle which produces turbulence, in Chapman's words, "like a tornado". Myers retained nothing except a drawing of the modified Cambridge filter, with the understanding that we would make the film available to any interested party upon request.

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Following the demonstration, Chapman asked the staff members present for a report as to where the matter now stands. Myers and Snyder responded that Philip Morris was the first company to respond to Myers's July 20 letter, but that three companies had requested and received extensions until "early this week." We were told that R. J. Reynolds was scheduled to meet with the staff the following day (August 20), but that there had been no further word from the other two companies (which we presume to be B&W and Lorillard) as to how or when they will respond. One company (presumably Liggett) had not responded at all, and another had requested additional time and, according to Myers, been granted permission to make a "bifurcated" response. (When Krash speculated aloud that the latter company is American, Snyder and Myers merely smiled.) Thus, the staff expects to have responses from four companies this week.

Chapman stated that Philip Morris is troubled by the suggestion that an independent expert or experts might be retained to study the matter and advise the Commission. He conceded that, assuming the Commission accepts our position that the only issue is dilution, we could hardly object to the retention of a qualified person to check our apparatus, particularly since that could be done within a period of a very few weeks. He stated that we would, of course, be happy to supply a list of potential candidates for that purpose. Both Chapman and Krash explained that for the Commission to pursue all the esoteric theories proffered by B&W would require a much longer period. They further noted that to do so would be to depart from the fundamental premise of the FTC method which is to derive comparative results by testing according to a standard set of smoking conditions that were never intended to replicate human smoking or to take into account all the variables at work in human smoking.

To the foregoing Myers responded (and Snyder later reiterated) that the staff has no intention of investigating every theory or notion mentioned in connection with this inquiry. He did state, however, that B&W has yet to respond to Philip Morris's position and is entitled to be heard.

Myers asked us to respond to two questions with a view of clarifying our position for the staff:

1. Does Philip Morris's theory as to how the Barclay filter operates depend completely upon the change in dilution between machine and human smoking and, assuming the answer is yes, does our theory stand or fall on the question of whether Barclay's peripheral channels are blocked by lip occlusion? Chapman responded in the affirmative to the first question and in the negative to the second. He stated that, while we continue to believe that occlusion is the primary explanation for the change in dilution, we have also seen evidence that some smokers may apply enough pressure to collapse the peripheral channels in the Barclay filter or to crimp the mouth end of the tipping paper, and that these effects could in some cases cause or contribute to the drop in dilution.

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2. In what percentage of smokers would this phenomenon (i.e., a drop in dilution) have to be observed before the FTC would have a basis for action? For example, would there have to be a showing that the effect is achieved with a significant majority (such as 60%) of smokers? Chapman responded that the staff should not be preoccupied with numerical incidence since it is not a variable of human smoking behavior that we are describing. Krash stated that the proper view of the matter is that, now that Philip Morris has demonstrated this phenomenon with what we consider to be reliable and consistent results, the burden has shifted to B&W to prove that the effect we describe is aberrant or erratic (for example, by proving that it occurs with no more than 5% of smokers). Krash conceded that it is only "common sense" that B&W be given the opportunity to prove us wrong.

Myers then purported to restate our position as follows: (1) PM's "puff parameter analyzer" is the key to dilution measurement which is the key to the entire inquiry, and (2) to establish PM's position, the drop in dilution would have to be observed in a "significant majority" of cases. Chapman contradicted the second point, saying that the effect must, of course, be more than aberrant, but that B&W now has the burden of proving that it is not.

By way of analogy, Myers recalled the recent debate as to whether smokers block the ventilation holes in cigarette tipping paper and thereby prevent or reduce dilution. While he claimed not to have been involved in that episode, he indicated that the Commission had decided that hole-blocking was subject to so many variables that the FTC method could not be modified to take such behavior into account, even though it was possible that a "significant" number of smokers might be found to be blocking. Chapman responded that, although he likewise had not been involved in any dialogue about hole-blocking, the present situation is not analogous since what PM has demonstrated here is a clearly measurable phenomenon. He reiterated that the FTC method is premised upon a set of standardized conditions (puff count and duration, length of insertion, flow rate, etc.) intended to yield comparative results. What PM proposes, he said, is simply the addition of another standard condition to take into account the normal function of the human lip and thereby close a loophole in the current testing protocol.

As to the timetable for future Commission action, Snyder repeated that the staff does not intend to take months before reaching some resolution, and Myers pointed out the speed with which the staff has acted to date. In response to a question from Krash, Myers said it was reasonable to expect word from him by the middle of the following week as to (1) what the staff considers the issue or issues to be, and (2) what further analysis or information, if any, the staff needs before making a decision in the matter. Krash requested that, if the Commission should decide that its investigation must be extended beyond a very few additional weeks, urgent consideration be given to the interim measures proposed by PM in its July 10 letter to Bureau Director Snead. Krash

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stated that PM is in a position to introduce a product very shortly and that one might expect other manufacturers to be making similar preparations. He predicted that, unless the FTC acts swiftly, there will be a proliferation of products with Barclay-type filters as early as this fall, which would send the Commission's testing program "over the dam."

At the end of the meeting, I inquired as to the status of the next FTC report of "tar" and nicotine deliveries. Myers responded that the report is on or ahead of schedule and is targeted for publication around November 1. When asked by Krash how Barclay would be treated in that report, Myers said that obviously would depend on the outcome of the present investigation.

The meeting ended with the understanding that Krash would hear from Myers by the middle of next week.

YDR

/jd

cc: Messrs. Ahrensfeld
Holtzman
Krash/Chapman/Katz

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